

REMARKS

This Amendment responds to the office action mailed on February 23, 2006. Claims 1-32 stand rejected. These rejections are respectfully traversed. Claim 3 is amended to provide a proper antecedent basis for the term “mathematical optimization program.” This is not a limiting amendment.

Examiner's Interview

The Patent owner's representative, Joseph M. Sauer, thanks Examiner Krisciunas for the courtesies extended during a telephone interview on May 17, 2006. During the interview, the pending claims and cited Siegrist reference (U.S. 5,652,842) were discussed. The remarks contained herein further summarize the interview.

Claim Rejections – 35 U.S.C. § 102

Claims 1-2, 4, 8-10, 14 and 17 stand rejected under 35 U.S.C. § 102(b) as being anticipated by Siegrist. The Applicant respectfully disagrees with these rejections. Among other distinctions, the Siegrist reference does not teach or suggest “a mathematical optimization program that includes an overall performance rating as an objective function” or “using the mathematical optimization program to optimize the overall performance of [a] first performer by adjusting a set of weights constrained by [] business logic rules,” as recited in independent claim 1.

The Siegrist reference describes a method for generating a printed report that includes information that may be used to compare the performance of service providers. (See, Siegrist, col. 1, line 46 – col. 2, line 63.) Siegrist also discloses using a set of stored rules to determine which stored data is the most pertinent and should therefore be printed on the report. (See,

Siegrist, col. 2, lines 10-19.) The Siegrist reference does not disclose anything, however, relating to a mathematical optimization program. Indeed, there are no mathematical optimization techniques of any sort described in the Siegrist reference.

The office action cites to column 4, lines 25-40 of the Siegrist reference as corresponding to the claim 1 limitation of “constructing a mathematical optimization program that includes an overall performance rating as an objective function.” The Applicant respectfully submits, however, that the cited portion of Siegrist has nothing to do with a mathematical optimization program. In fact, it does not relate to a program of any sort. Rather, the cited section of the Siegrist reference describes a “final report” that presents a “mathematical and graphical comparison” of user defined parameters along with an explanation of the comparison results. Significantly, neither this “final report,” nor any other portion of the Siegrist reference, relates to optimization.

More specifically, the Siegrist reference does not teach or suggest optimizing an overall performance rating “by adjusting a set of weights,” as recited in claim 1. The office action cites to Table III, columns 25-26 of Siegrist as corresponding to this claim element. The Applicant respectfully disagrees. The table set forth at columns 25 and 26 of Siegrist merely lists “relative weights” that are included in a table of information relating to “Diagnosis Related Groups,” which may be selected by a user for inclusion in a report. (See, Siegrist, col. 7, lines 43-54). There is no apparent description in Siegrist of how these weights are derived or even what they refer to. And there is clearly no suggestion that these weights are adjusted by a mathematical optimization program to optimize an overall performance rating.

For at least these reasons, the Applicant respectfully traverses the rejection of claim 1 over Siegrist, and submits that claim 1 is in condition for allowance. Claims 2-19 each depend from claim 1, and are therefore also in condition for allowance for at least the same reasons as claim 1.

Claim Rejections – 35 U.S.C. § 103

Claims 3, 5, 7, 15-16, 18-24 and 28-32 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Siegrist in view of Benjamin (US 2002/0107723), and claims 12-13 and 26-25 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Siegrist. The Applicant respectfully disagrees these rejections. Regarding independent claim 20, neither of the cited references teach or suggest “a mathematical optimization program... that includes an overall performance rating as an objective function; said mathematical optimization program using the performance measure data to optimize the overall performance rating of the performers by adjusting a set of weights constrained by the business logic constraints.” As explained above, the Siegrist reference does not disclose anything related to a mathematical optimization program,” nor does it disclose an optimization function that is performed by adjusting a set of weights. The Benjamin reference does not cure this defect. Therefore, claim 20 is patentable over the cited references for at least the same reasons as claim 1, and is in condition for allowance. Claims 21-32 each depend from claim 20, and are therefore also in condition for allowance.

Regarding the rejection of claim 12-13 and 26-27, the Applicant respectfully disagrees with the official notice taken by the Examiner that the use of both linear and non-linear programming is obvious. In addition, with reference to the rejection of claim 3, the Applicant respectfully disagrees with the conclusion of the office action that Siegrist teaches using a linear

program model to optimize the overall performance rating. First, Siegrist does not describe optimization techniques of any sort, as explained above. Moreover, no portion of the Siegrist reference, including column 1, lines 58-62 cited by the office action, teach the use of linear programming. Claim 3 is therefore patentably distinct from the cited references for this additional reason.

Conclusion

For the foregoing reasons, Applicants respectfully submit that claims 1-32 are in condition for allowance. The Examiner is, therefore, respectfully requested to enter this Amendment and pass this case to issue.

Respectfully submitted,

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